

May 7, 1997

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON

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REPORT AND DECISION ON AN  
APPEAL FROM THRESHOLD DETERMINATION:

- A. MULTI-FAMILY DEVELOPMENT BUILDING PERMIT
- B. DETACHED SINGLE-FAMILY RESIDENTIAL CONDITIONAL USE PERMIT

SUBJECT: Department of Development and Environmental Services File No. **L96AC003**

**VILLAGE SQUARE CONDOMINIUMS**  
Appeal of Threshold Determination

**Location:** Between Southeast 310th Street and Southeast 312th Street,  
immediately west of 124th Avenue Southeast, near Auburn

**Applicant:** Ken Peckham/Schneider Homes  
Represented by  
George Kresovich, Esq.  
1221 Second Avenue, #500  
Seattle, WA 98101

**Appellants:** Paula Thrush, et al.  
10872 SE 318th Place  
Auburn, WA 98092

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary: Deny the Appeal  
Division's Final: Deny the Appeal  
Examiner: Deny the Appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: March 11, 1997  
Statement of appeal received by Examiner: March 11, 1997

EXAMINER PROCEEDINGS:

Pre-hearing Conference: March 26, 1997  
Hearing Opened: April 29, 1997  
Hearing Closed: April 30, 1996

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Traffic safety
- Pedestrian safety
- Drainage
- Land use compatibility; neighborhood character
- School enrollment impacts
- Recreation

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. Scope. These findings are based upon a consolidated public hearing which addressed both a conditional use permit for a portion of the subject property and a threshold determination appeal directed toward the entire project. These findings are based upon an open record review of the appealed departmental decision below.
2. Departmental Decisions. The Department of Development and Environmental Services ("DDES" or the "Department"), on February 4, 1997, published a (mitigated) determination of nonsignificance ("MDNS"). That is, the Department published its determination that an environmental impact statement would not be required for the proposed development, provided that certain mitigating measures were enacted. Those measures are discussed in Finding No. 7 (Drainage), below.

On February 5, 1997, the Department issued its Conditional Use Report and Decision which approved the detached single-family residential portion of the proposed development. A Conditional Use Permit for such a development is required, in this case, because the property is classified "multi-family". A decision on the Conditional Use Permit portion of the development is not included in this report. All parties have agreed that the Examiner's Conditional Use Permit report and decision will not be entered into the public record until this SEPA report and decision is issued, thus precluding examiner prejudgment of the merits of the Conditional Use Permit.

3. Proposed Development. Schneider Homes (the "Applicant"), represented by George Kresovich, proposes to develop 147 multi-family units and 94 single-family detached condominium units on a 14.13 acre site located between Southeast 310th Street and Southeast 312th Street, immediately west from 124th Avenue Southeast. The site fronts on Southeast 310th Street on the north, 124th Avenue Southeast on the east, and Southeast 312th Street on the south. Site access is proposed for all three streets. The project is described in this hearing record by Exhibit No. 7 (Village Square Condominium's site plan, 3-19-97) and by the site plan attached to the Department's MDNS dated February 4, 1997 (Exhibit No. 2).
4. Appeal. On February 19, 1997, Paula Thrush, et al., filed Notice of Appeal from the Department's threshold determination. The appeal was refined and clarified as a result of a prehearing conference conducted on March 26, 1997, leaving the following issues for review:
  - Increased traffic impacts
  - Pedestrian safety
  - Increased stormwater run-off impacts;
  - Land use compatibility and impact upon neighborhood character
    - Internal distribution of development density, and
    - Development density with respect to neighboring single-family residential neighborhood;
  - Noise (interim, recreational, other)
  - Impact on local schools
  - Recreation
    - Recreation demand with respect to adequacy of facilities available; and location of proposed project recreational open space

At the conclusion of the hearing the Department moved to dismiss that portion of the appeal related to "noise" due to lack of evidence presented. Acknowledging the Department's assertion, the Appellant withdrew that portion of the appeal. Other areas of issue were raised at the hearing but were not allowed upon motion of the Applicant and/or the Department due to those issues having not been mentioned at the pre-hearing conference or in the original statement of appeal.

5. Traffic and pedestrian safety. Based upon evidence and argument presented, the dominant concern of this review is pedestrian safety for students attending Lea Hill Elementary School and for those students who catch the bus to Hazelwood Elementary School on 124th Avenue Southeast. The following findings are relevant:
  - A. The Appellants' express concern regarding the method of analysis undertaken by the Department in reaching its conclusion that neither additional special mitigating measures nor an environmental impact statement need be required to address pedestrian/vehicular conflicts or traffic volumes. The Appellants have not, however, offered any alternative technical analysis.
  - B. The Applicant is providing sidewalks for safe walking conditions along the full 124th Avenue Southeast and Southeast 312th Street frontage. In addition, King County is developing sidewalks and/or walkways along those same two streets in areas which are offsite from the proposed development. These improvements will be established at County Urban Standard, with curb, sidewalk and gutter-controlled drainage. A "gap"

along Southeast 312th Street is expected to be filled when those properties develop consistent with current zoning.

- C. Appellants desire, as a mitigating measure, a pedestrian overpass across 124th Avenue Southeast at mid-block. A pedestrian activated traffic signal is located a two minute walk southward (unrefuted testimony of Barbara Heavey). The School District has determined that a pedestrian overpass is not "economically feasible." RCW 43.21C.060 prohibits the County from requiring the Applicant to do that which the Applicant is not capable of doing. In addition, RCW 43.21C.060 also requires that the mitigating measures required of an applicant must be proportional to the impact of the development which the applicant proposes. In this case, the Appellants concede that the perceived pedestrian safety issue exists at the 124th Avenue Southeast/Lea Hill school crossing regardless of whether the proposed development is constructed or not.
  - D. The students from the proposed development will not attend Lea Hill Elementary School. They will attend Hazelwood Elementary School. Thus, they will not walk to school, but will walk to the Hazelwood Elementary School bus pick-up. As a mitigating measure, the Applicant is providing a bus pull-out for the school district at the district's request.
  - E. The Appellants concede that certain mitigating measures are already enacted by the district and by supportive parents. The Lea Hill Elementary School crosswalk on 124th Avenue Southeast is clearly marked and lighted. During appropriate times, crosswalk guards are provided. When a school bus stops, all traffic must stop when the school bus indicates its red stop flag.
6. Traffic volume and level of service (LOS). The record contains substantial traffic analysis. See, in particular, Exhibit Nos. 8, 9, and 10. The Appellants express concern that sufficient analysis was not conducted, that Green River Community College (GRCC) traffic was not taken into consideration due to the timing of traffic counts and that the Department erred by not considering the relative higher peak load during the AM peak traffic period. The following findings are relevant:
- A. Exhibit No. 8 provides a July 26, 1995, general traffic analysis. Exhibit No. 9 provides an October 19, 1996, supplemental traffic analysis submitted to address the issues of PM-peak hour traffic counts while GRCC was in session, as well as to address the relocation of the multi-family site access and whether left turn lanes were required. Both of these studies were based on a project description that included 180 multi-family units instead of the proposed 147 units, thereby exaggerating the traffic impact of the proposed development in the projection analysis. Exhibit No. 10 provides additional PM-peak hour turning movement volumes in December 1996.
  - B. Paulette Norman, PE, Roads Division, testifies that her office was fully aware of the higher AM-peak hour load due to GRCC and incorporated that knowledge into the Roads Division's review of the traffic studies prepared by consultants to the Applicant.
  - C. Two of the analyzed intersections meet the County adopted significant adverse impact criteria of LOS "F": the intersection of 104th Avenue Southeast/Lea Hill Road about a mile west of the site; and, the 124th Avenue Southeast/Southeast 312th Street intersection adjacent to the site. In the case of the 104th/Lea Hill Road intersection, the developer will be required to improve capacity by providing left turn lanes on Lea Hill Road and

contributing to signalization of that intersection. The 124th Avenue Southeast/Southeast 312th intersection is included in the County's capital improvement program. Funding for design and right of way of acquisition is available in 1997 and construction is tentatively scheduled for 1998. Because the County capital improvement program will fund the required improvements to this intersection, the Applicant is not required to do so.

- D. The SR18/Southeast 312th Way intersection currently functions at LOS "D". With or without the proposed development, the LOS at that intersection is expected to diminish to LOS "E". However, the Washington State Department of Transportation ("WSDOT") is now scheduled to relocate the SR 18 access intersection further north and east with significantly improved capacity.
- E. The Applicant will be required to provide the following as a result of conditional use permit approval and building permit approval:
- Full urban improvements along all street frontages of the site, to include curb, gutter and sidewalks;
  - Dedication of right of way and improvement of Southeast 10th Street to meet King County "half-street" urban standards;
  - A northbound left turn lane on 124th Avenue Southeast at the site access;
  - Northbound left turn lane and southbound right turn lane on 124th Avenue Southeast at Southeast 310th Street (if further studies warrant under currently adopted design guidelines);
  - Eastbound left turn lane on Southeast 312th Street at the site access;
  - Westbound right turn pocket on Southeast 312th Street at the site access; and,
  - As noted above, a school bus pull-out along 124th Avenue Southeast.
- F. In addition, the Applicant is required to contribute approximately \$800 per unit (the specific amount has not yet been calculated) to the King County "mitigation payment system" ("MPS"), a system whereby the monies provided by the Applicant are spent by the King County Department of Transportation (King DOT) within a street zone within which the project is located.
7. Stormwater drainage. The proposed development is located within two sub-basins. One of those, which forms the beginning of Tributary 0069 (also known as Lea Hill Tributary) to Green River, is particularly sensitive. The concerns regarding this water course are addressed in the Enhanced Reconnaissance of the Eastern Tributaries of the Lower Green River Basin, published by the King County Basin program (now of the Department of Water and Land Resources), November 19, 1994. The lower one-half mile of this tributary is recognized as a "locally significant resource area for fish habitat."

The Appellants express concern, based upon observations of past development in the area, that the proposed development will adversely impact the watercourse and/or the ravine through which

it passes. The Appellants do not provide any technical analysis as an alternative to the County analysis, however. The following findings are relevant:

- A. Due to the downstream channel erosion experienced along the Tributary 0069 corridor, the Applicant is required to provide drainage control consistent with the "stream protection standard," the highest retention/detention standard required by King County. The stream protection standard substantially increases the volume of peak stormwater which must be retained on the project site (thereby requiring greater storage capacity), then requires a reduced rate of peak storm discharge in order to reduce erosional effects. The stream detection standard requires that onsite retention/detention facilities (regardless of whether they are "covered"), must be designed to reduce post-development flow duration to predevelopment levels for the two and ten-year 24-hour duration storm. The calculated volume is then increased by a 30% safety factor. Storm water control facilities will address each sub-basin separately, thereby preventing an unnecessary additional load on either basin.
- B. All water from roads, roofs and other impervious surfaces within the site will be collected and directed to the required drainage facility for release at the controlled rate, thereby creating no significant additional flows to affect downstream conveyance systems.
- C. These are the specific MDNS mitigating conditions:

"Stormwater management facilities for this proposal shall be built to one of the following standards to reduce the duration of erosive flows in Lower Green River Tributary 0069:

- "Using the King County Runoff Time Series (KCRTS) program so that post-development flow durations shall not exceed pre-development flow durations for all discharges between one-half of the 2-year flow and the 50-year flow. A 20-percent volumetric safety factor shall be added.
- "Using the SCS-SBUH 24-hour Storm Method described in the 1990 Design Manual so that post-development 2-year, 10-year, and 100-year storm flows shall not exceed pre-development storm flows equaling one-half of the 2-year, 2-year, and 10-year flows, respectively. A 30-percent volumetric safety factor shall be added."

- 8. Compatibility and neighborhood character. The proposed site plan is incorporated in this hearing record as Exhibit No. 7. It calls for the western portion of the property to be developed as multi-family (R-24 zoning) and the eastern portion to be developed as a single-family residential conditional use. The Appellants suggest that a transposed site plan with the multi-family and single family portions locationally swapped, would be more logical. They express concern that the multi-family portion, in particular will adversely affect existing neighboring single-family residential properties. The following findings are relevant:

- A. This proposal is consistent with the land use designation applied by the King County Council to the affected parcels as part of the King County 1995 Comprehensive Plan. The County plan for the area designates the neighborhood as mid-level urban density.
- B. The most western boundary of the proposed development will contain a storm detention facility, not multi-family residences. The next most western boundary of the subject

property contains a one-acre area to be dedicated to the City of Auburn and developed as a neighborhood park.

- C. The area is currently in transition from large lot single-family homes and rural farms to urban residential development. Other new single-family development in the area is at a density consistent with the underlying zoning. The Campus Village Townhomes, located south of the subject property, is substantially similar to the proposed townhomes.
  - D. Older existing multi-family developments are located eastward on Southeast 312th Street. Their density is similar to the proposed project.
  - E. There are adjacent parcels which contain "substantial unrealized residential density," meaning that they are classified to provide substantially increased substantial development; however, the property owners have not yet developed those properties in a manner permitted by applicable plans and zoning.
  - F. GRCC and associated higher density residential development is located south of the subject property. In addition, commercial areas at the intersection of 124th Avenue Southeast and Southeast 312th Street have future significant expansion potential not yet realized. The Department argues that, "the proposed development densities of the project are consistent with the underlying zoning on the parcel and the changing nature of urban residential and commercial densities in the area."
9. School enrollment capacity. The Auburn School District commented, in writing, on the proposal, but did not indicate any capacity or overcrowding problems at any of the adjacent schools or within the District in general. The Appellants argue that Lea Hill Elementary School is at capacity. However, children from the proposed development will not attend that school. They will attend, instead, Hazelwood Elementary School.
10. Recreation. The Appellants express concern that the proposed park will not be developed in a sufficiently timely manner. However, King County will not allow occupancy in the absence of park development. In addition, the Applicant is providing a recreational area with recreational building and pool, to serve the proposed development. A tot lot will also be provided. The proposed location of the dedicated public park will provide buffering between neighboring properties and proposed multi-family units. The park is to be developed consistent with City of Auburn park development standards.
11. Section D of the Division's April 29, 1997, Preliminary Report to the King County Hearing Examiner (Exhibit No. 1) cites the scope and standard of review to be considered by the Examiner. The Division's summary is correct and will be used here. In addition, the following review standards apply:
- A. WAC 197-11-350(1), -330(1)(c), and -660(1)(3). Each authorize the lead agency (in this case, the Environmental Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.
  - B. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the

Responsible Official shall be entitled to "substantial weight". Having reviewed this "substantial weight" rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency "negative threshold determination" is whether the action is "clearly erroneous". Consequently, the administrative decision should be modified or reversed if it is:

...clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.

12. Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated April 29, 1997 (published April 15, 1997) are correct and are incorporated here by reference.
13. Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

**CONCLUSIONS:**

1. As noted in Finding No.11, above, the burden of proof falls on the Appellant in a threshold determination appeal. Considering the preponderance of the evidence, the Appellant has not successfully borne that burden in this case. Considering the above findings of fact and the entire hearing record, it must be concluded that the Division's threshold determination in this matter is not clearly erroneous and therefore cannot be reversed.

The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Division's determination.

2. The issues raised by the Appellant are valid reasons for concern. However, the Appellant has not demonstrated by the introduction of evidence (not to mention a "preponderance of evidence") that DDES has erred in its analysis of those issues.
3. In addition, the following conclusions apply:
  - A. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration of non-significance. Rather, the Appellant differs with the Division's assessment of impacts or the probability of potentially adverse impacts. Speculation or expression of concern with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination.
  - B. Although the Appellant argues that the information on which the Division based its determination was insufficient, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous.
  - C. There is a substantial amount of information in the record regarding the various impacts



which have been asserted by the Appellant. The Division has not been unaware of these issues and has investigated (and reinvestigated) them, but has arrived at conclusions which differ from the Appellant's. The Division, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination of non-significance. The Division's judgement in this case must be given substantial weight.

- D. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Division's decision is not clearly erroneous and is supported by the evidence.
4. In this case, the Department has excellently taken into consideration WAC 197-11-350(1), -330(1)(c), and -660(1)(3), by anticipating the necessary measures to be taken to mitigate environmental impacts resulting from the proposed development, particularly with respect to traffic and drainage. Where such plan components or regulatory requirements did not mitigate impacts consistent with SEPA standard, the Department made sure by adding the MDNS mitigating conditions cited in Finding No. 7, above.
5. See also Finding No. 5.C, above, regarding the pedestrian overpass idea.

DECISION:

With respect to all issues, the appeal of Paul Thrush, et al, is DENIED. The SEPA threshold determination decision of the Department, as described in Finding Nos. 2 and 7, above (and a contained in Exhibit No. 2 of this hearing record) is AFFIRMED.

ORDERED this 7th day of May, 1997.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED to the following parties and interested persons:

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Gary Samek, and Paulette Norman, KC Dept. of Transportation KC Dept. of Transportation  
Mark Lampard, Water Land Resources

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding applications for Conditional Use Permits. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

**MINUTES OF THE APRIL 29 AND 30, 1997, PUBLIC HEARING ON DDES FILE NO. L96AC003 - VILLAGE SQUARE CONDOMINIUMS SEPA AND CONDITIONAL USE PERMIT APPEAL.**

R. S. Titus was the Hearing Examiner in this proceeding. Participating at the hearing were Barbara Heavey, Gary Kohler, Paulette Norman, Mark Lampard and Wilsey Hamilton, representing the County; George Kresovich, Paula Thrush,, Lyle Gelbach, Ken Peckham, Tim Gilmore, Floris Van Weelderen, Sue Stafford and Mel Daley.

The following exhibits were offered and entered into the hearing record:The following exhibits were offered and entered into the hearing record April 29, 1997:

Exhibit No. 1	Department of Development and Environmental Services, Land Use Services Division, Report to the Hearing Examiner
Exhibit No. 2	Determination of Nonsignificance (Mitigated) for Village Square Condominiums File No E96E0074 issued February 4, 1997, with attached site plan.
Exhibit No. 3	Environmental checklist dated January 1, 1997, as annotated by lc
Exhibit No. 4	Amended Environmental checklist and staff recommendation dated January 28, 1997
Exhibit No. 5	Conditional Use Permit Report and Decision dated February 5, 1997
Exhibit No. 6	Appeal of Threshold determination of Nonsignificance consisting of: Notice of Appeal and list of appellants dated February 19, 1997; Letter from donald L. and Susan D. Stafford dated February 25, 1997; Unsigned memo to Don and Sue Stafford dated February 25, 1997; Memo from Lyle and Debbie Gelbach dated February 19, 1997; and Letter from Paula R. Thrush dated February 24, 1997.
Exhibit No. 7	Village Square Condominiums Site Plan, March 19, 1997 revision
Exhibit No. 8	Village Square Condominiums Traffic Analysis, July 26, 1995
Exhibit No. 9	Village Square Condominiums Traffic Analysis, letter to Ken Peckham, October 29, 1996
Exhibit No. 10	Telecopy transmittal to Aileen McManus, December 17, 1996
Exhibit No. 11	Level 1 Drainage Analysis for Lee Hill Townhomes, March 24, 1995
Exhibit No. 12	Existing Topography Conditional Use Permit Application
Exhibit No. 13	Letter from Robert D. Poldervart, Auburn School District
Exhibit No. 14	SEPA file (submitted at hearing)
Exhibit No. 15	CUP file
Exhibit No. 16	Colored map showing zoning
Exhibit No. 17	Tom Gilmore testimony packet
Exhibit No. 18	A Guidebook for Student pedestrian Safety

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Exhibit No. 19	Lyle Gelbach summary of issues and testimony
Exhibit No. 20	Letter dated April 24, 1997, from Kent Pullen to Ron Sims
Exhibit No. 21	Letter dated April 24, 1997, from Kent Pullen to Residents
Exhibit No. 22	Susan Stafford statement (excluding wildlife and wildlife habitat)
Exhibit No. 23	Material prepared by Anita Sheneberger regarding traffic
Exhibit No. 24	Article from April 16, 1997, South County Journal entitled "Auburn schools soothe residents."
Exhibit No. 25	Video taken by Pat Fox
Exhibit No. 26	Paula Thrush testimony with certain portions excluded
Exhibit No. 27	Vicinity map of area interchange project

RST:daz

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